

Annual Report 1985*

Office of the Commissioner

Law Enforcement Review Agency

Law Enforcement Review Board

* For the period February 1, 1985 to December 31, 1985

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Winnipeg, Manitoba



The Attorney General

Winnipeg, Manitoba, CANADA
R3C 0V8

Her Honour
The Honourable Pearl McGonigal
Lieutenant-Governor of Manitoba

Your Honour:

It is my pleasure to present the 1985 Annual Report of the Law Enforcement Review Agency. This report details the Commission's accomplishments and activities for an 11-month period, from February 1, 1985 to December 31, 1985.

I trust this meets with your approval.

Respectfully submitted,

A handwritten signature in cursive script, reading "Roland Penner".

Roland Penner, Q.C.
Attorney-General for the
Province of Manitoba



Attorney General

Law Enforcement
Review Agency

12th Floor
Woodsworth Building
405 Broadway
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The Honourable Roland Penner, Q.C.
Attorney-General
Province of Manitoba

Dear Mr. Minister:

I am pleased to submit my report for the period February 1, 1985 to December 31, 1985, in accordance with Section 45 of The Law Enforcement Review Act.

The report covers the eleven months of the calendar year 1985 during which The Law Enforcement Review Agency was in operation.

Yours sincerely,

A handwritten signature in black ink, appearing to read "H. Schneider". The signature is fluid and cursive, with a long horizontal stroke at the end.

Hans J. Schneider
Commissioner

Table of Contents

TITLE	PAGE
L.E.R.A Establishment and Board Members	6
Background	7
Workload	7
Public Awareness	8
The L.E.R.A Process	8
Other Activities	10
Statistical Tables	11
Appendices	14
Appendix I	14
Complaint Form	14
Complaint Procedures	15
Appendix II	17
The Law Enforcement Review Act and Regulations	17

Law Enforcement Review Agency and Board Establishment

The full time staff of L.E.R.A. consists of:

Hans J. Schneider — Commissioner
Sharon L. Davis — Registrar and Secretary

The following personnel attached to the Law Enforcement Services Branch of the Attorney-General's Department provide investigative services to L.E.R.A. from time to time:

Mr. Del Hanson — Chief Investigator
Mr. Jack Hunter
Mr. Tommy Marshall (contract)

Mr. Neville Shende, Q.C., the Deputy Director of Legal Services, Attorney-General's Department acts as legal counsel to the Commissioner.

The Law Enforcement Review Board included the following members in 1985:

Ms. Sheilla Leinburd, Presiding Officer
Mr. John Scurfield, Deputy Presiding Officer

Ms. Leinburd and Mr. Scurfield are in private law practice in Winnipeg.

Lay Members:

Mr. Greg Selinger
Assistant Professor of Social Work, University of Manitoba

Mr. Francesco Valenzuela
Community worker, former acting Chief of Criminal Investigation and police academy instructor, Santiago, Chile

Mrs. Dolores Beaumont
Physical education and French immersion teacher, Ste. Anne, Manitoba

Mr. Clark Morrisette
Provincial Coordinator, Manitoba Metis Child and Family Support Program

Dr. Robert Florida
Head of Department of Religion, Brandon University

Mrs. Verna McKay*
Social Worker with the United Church Ministry for Native people.

Ex-Peace Officers

Mr. Edward Galliard
Superintendent, (Retired) R.C.M.P.

Mr. Ray Johnson
Inspector, (Retired) R.C.M.P.

Mr. Matthew Barry
Detective Sergeant, (Retired) Winnipeg Police Dept.

Mr. John Gongos
Assistant Commissioner, (Retired) R.C.M.P.

Mr. Leslie Isles
Superintendent, (Retired), Winnipeg Police Dept.

*Resigned in May, 1985 and replaced by Mr. Clark Morrisette.

Administrative support for the Board is provided by the Commissioner's office.

Background

The Law Enforcement Review Act came into force on February 1, 1985. This first annual report therefore covers a period of eleven months from February 1 to December 31, 1985. Our report covering this period will be brief and modest. Although there is always a temptation to claim substantial achievements particularly at the outset of a new program, it is too early for any conclusive deductions to be made. It will require at least another full year of experience before we can make some confident assumptions. Meanwhile, with that word of caution, we can offer some speculative insights which nevertheless will indicate L.E.R.A.'s present and future course.

L.E.R.A. started as a two-person operation — commissioner and an administrative secretary who doubles as the Registrar of the Law Enforcement Review Board. Some intermittent part-time investigative services have been provided through staff and contract services of the Attorney-General's Law Enforcement Services Branch. Because complainants, respondent officers and most witnesses have been interviewed by the Commissioner himself, the total requirement for these investigative services has not been extensive amounting to considerably less than the equivalent of one-half staff person year.

Of greatest significance for L.E.R.A.'s success in coping with its workload, has been the cooperation of the Winnipeg Police Department through the staff of its Internal Investigation Unit. They have promptly and efficiently identified respondent officers and facilitated the latter's attendance at interviews with the Commissioner, provided relevant police reports and generally ensured prompt communication between L.E.R.A. and the office of the Chief of Police. Since the Winnipeg Police Department comprises over 90% of the police officers in the Province, coming within the jurisdiction of The Law Enforcement Review Act, that department also accounts for almost the whole of the agency's workload. We would also express our appreciation to Chief Herb Stephen who has been meticulous and courteous in all his dealings with L.E.R.A., while representing his department's and his officers' interests forthrightly and candidly. Although there have been differences of perception in the joint review of some case files, our discussions have always been mutually beneficial.

Particularly gratifying has been the cordial and constructive relationships with the Winnipeg Police Association through its President, its Officers and Legal Counsel. Their influence has been instrumental in developing a degree of confidence in the L.E.R.A. process which appears to be making it increasingly acceptable among their membership. This is evidenced by the fact that officers involved in complaints are becoming less reluctant and more candid in coming forward to respond to complaints. There have only been two instances where respondent officers initially refused to make a statement to the Commissioner.

L.E.R.A.'s ultimate goal is the recognition by police as well as citizens that the new way of dealing with complaints is both fair and more satisfactory than the system it replaced. Some additional observations on this topic will be found later in this report under the heading L.E.R.A. Processes.

Whereas contact with police departments outside of Winnipeg has been minimal, what there has been is no less satisfactory. Only two complaints necessitated a conclusive investigation culminating in a final report from the Commissioner's office with no further action required thereafter. In either case the cooperation of the departments left nothing to be desired.

Workload

Before the onset of the L.E.R.A. program, based on the rudimentary statistical evidence available we estimated a first-year workload of 300 complaints to be investigated. The actual figure has been 112, of which 105 or almost 94% originated in Winnipeg quite in line with the relative size of the municipal police forces within L.E.R.A. jurisdiction. In addition, we dealt with 55 other citizens' representations from all over the province and covering a great variety of concerns. We endeavoured in each case to be as helpful as we could even though the matters did not come within L.E.R.A. jurisdiction.

Of the 112 files opened during the year, 88 were completed including three referrals to a hearing of The Law Enforcement Review Board on the merits of the complaint.

The much lower than expected number of complaints invites speculation as to the probable cause. It is tempting to assume that the very inauguration of L.E.R.A. has had a salutary influence on police conduct, but that would be a marginal factor at best. Without a doubt there has over the years been a change of police attitude which tends to reduce incidents leading to complaints. The development of professional skills in all phases of police work, to replace a more risky and traditional rough and ready individualism, is probably offset to some degree by an increasing pugnacity among members of the public, especially young people, towards police. The challenge this represents can best be met by the development of an ever greater degree of professionalism in police work. L.E.R.A. may possibly make a contribution to this development over the years. A continuing decline in the number of citizen complaints will be proof that this development is occurring.

While neither a comparison with previous years nor with other jurisdictions affords a scientifically reliable statistical result, we may claim with some confidence that the incidence of complaints against police in Winnipeg is within acceptable limits. It is, for example,

roughly half that of Metropolitan Toronto, on a per capita basis. A public complaints commissioner has been in office in Toronto since 1982 and Manitoba's program was in part based on the Toronto model. There are however significant differences. In Manitoba the L.E.R.A. Commissioner has responsibility for the investigation and processing of every complaint alleging misconduct by a police officer. In Toronto the Police Department itself investigates and resolves complaints while the Public Complaints Commissioner monitors the police complaints process and only deals directly with requests for review from complainants who are dissatisfied with the way their complaints were dealt with by the police. According to his Annual Report for 1984, out of a total of over 800 complaints lodged with the Toronto police, the Toronto Complaints Commissioner received 98 requests for review. This compares with the 105 complaints dealt with by L.E.R.A. in the 11 month period from residents of Winnipeg. The Toronto Police complaints bureau has a staff of 24 and the Toronto Public Complaints Commissioner has a staff of 22. In comparison, the Manitoba program with just two full-time staff could be described as an economical operation.

There are some important activities which have had to be delayed because of the pressure of routine business. This aspect will be discussed later in the report. In terms of actual workload related to complaints there is no increase. On the contrary, as Table 2 shows, there were only six complaints received in November and five in December, whereas the average in each of the preceding 10 months was over 11 complaints. This trend has continued into 1986, with six complaints in January and only four in February. The February figure is particularly interesting since it permits a year to year comparison with February, 1985, the first month of L.E.R.A. operations when 10 complaints were received. While the numbers are too small to be statistically reliable, the results are certainly encouraging.

Public Awareness

Not all citizens with grievances against the police come to L.E.R.A. Those with equanimous dispositions are more likely to suppress their anger if the incident is not too serious. As a result, L.E.R.A. receives a preponderance of complaints from more aggressive individuals whose temperament is also likely to be more conducive to provoking confrontations with police officers. It would be desirable to encourage a greater number of more reserved complainants to come forward. This will no doubt happen when it becomes more widely recognized that L.E.R.A. provides a complaint process which is completely independent of the police.

Meanwhile, there should be every confidence that all those who would have complained before the inception of L.E.R.A., still do so, and some complainants who were averse to lodging a complaint at a police station, have no compunction about coming to L.E.R.A. In addition, a number of complainants whose attempts to register a grievance with the police might previously have been diverted or rebuffed, are now automatically referred to L.E.R.A. To illustrate this point, in one case concerning an incident that occurred a month before the coming into force of **The Law Enforcement Review Act**, the complainant had made several approaches to the local police station, had tried to get the R.C.M.P. to intervene, and had telephoned his councillor and senior police officials. Finally a letter he wrote to the Chief of Police, three months after the incident, was forwarded to L.E.R.A. and a process was initiated which culminated in a simple and amicable informal resolution. Besides clearing up a misunderstanding, it also averted what promised to develop into serious disaffection between an entire family and the local police.

Any concern that the newness and relative anonymity of L.E.R.A. may be reducing the number of complaints below their previous totals is therefore, unjustified. A modest stepping up of publicity would be desirable and will be undertaken in the second year. During the first 11 months of L.E.R.A. operations, there have been circa 20 press items referring to L.E.R.A. including editorials and feature articles. There were in addition numerous references on radio news and four appearances by the Commissioner on radio talk or information shows. The most immediate discernible impact of each publicity event was an increase in the number of "crank" calls. There was no measurable effect on the incidence of legitimate complaints.

The L.E.R.A. Process

The success of the L.E.R.A. program depends to the largest extent on the integrity of the complaint process. The first requirement, to afford every complainant an opportunity to voice his or her grievance, to receive fair and thorough consideration and, eventually a comprehensive and well-reasoned response, has been achieved. The second requirement to deal with complaints in an expeditious and timely fashion, presents difficulties and calls for improvements. In that respect, the single most encouraging feature is the promptness and co-operation of the Winnipeg Police Department which usually provides the names of respondent officers, relevant police reports and other information within 24 hours of receiving a copy of the initial complaint. Eighty percent of complainants attend at the L.E.R.A. office to register their complaint, the balance

make their initial complaint at a police station, or through the Manitoba Youth Centre. Delays are caused by difficulty in scheduling attendance of respondent and witness officers, obtaining medical reports and locating and interviewing independent witnesses. The investigative process would be improved if at least one full-time investigator were attached to the Commissioner's office. Although there can be no criticism whatsoever of the cooperation received from The Law Enforcement Services Branch of the Attorney-General's Department in providing part-time investigative services, the arm's-length nature of the arrangement does create a bottleneck and deprives the investigative process of the close day-to-day interaction and case consultation with the Commissioner that would be desirable. On the other hand, unless the number of complaints increases substantially, there is no justification for incurring the cost of a full-time investigator.

The investigation and disposition of complaints is conducted in accordance with the provisions of **The Law Enforcement Review Act**, which is included in the Appendix. A sample of the initial complaint form is also included in the Appendix as is a sample of Form 2 which describes the complaint process from the complainants point of view.

Complaints may be disposed of as follows:

1. A decision by the Commissioner not to take any further action because the complaint does not constitute a disciplinary default as defined in the Act or because it is deemed frivolous or vexatious. Of the 86 files closed during the year, 33 fall into this category. However, in a substantial proportion of such cases, a detailed investigation report and analysis was nevertheless completed.

By dealing this extensively with complaints even when a decision is taken that no further action is warranted, it is possible to demonstrate to a complainant that his or her grievance has received thorough consideration. In many cases there are aspects which should be brought to the attention of respondent officers and their superiors even though the matter complained of does not constitute a disciplinary default. Examples of reports dealing with rejected complaints are included in the Appendix. Under the Act a complainant may appeal a decision of the Commissioner not to take any further action, to the Manitoba Police Commission. If the Commission allows the appeal, it makes an order referring the complaint to a hearing of the Law Enforcement Review Board. In the report year, two applications by complainants were made to the Manitoba Police Commission. The Commission dealt with the first of these by rejecting the appeal. The second one still remains to be heard.

2. The Act provides that the Commissioner must attempt to resolve each complaint informally. Of the 96 complaints disposed of in the report period, 25 complaints were resolved informally. In effecting informal resolutions, the Commission has stressed that this does not involve either a finding or an admission that a disciplinary default has been committed. It does involve a genuine feeling of grievance by the complainant, an opportunity for a thorough airing, and a conclusion which is acceptable to the complainant. In a number of cases the complainant is satisfied to have the matter thoroughly investigated, responded to by the officers involved and a final report filed with the police department, faithfully representing and analyzing the perceptions of the complainant and the explanations of the respondent. In some cases the respondent may provide an apology or explanation of his actions directly to the complainant orally or in writing, or it may be conveyed via the Commissioner's report.
3. An admission by the respondent of having committed a disciplinary default. In the reporting period, no admissions were made.
4. Referral to the Law Enforcement Review Board for a hearing on the merits. Complaints are referred to the Board either by order of the Manitoba Police Commission, when the Commission overrules the Commissioner's decision to take no further action on a complaint, or directly by the Commissioner when an informal resolution is not achievable. A total of three complaints were referred to a board hearing during the reporting period but only one hearing was held. The other two were deferred to dates in the new year because of scheduling difficulties.

In the one case that came before it, a panel of the board presided over by the deputy presiding officer, Mr. John Scurfield, found that the two respondent officers had committed no disciplinary default.

In this case the complainant had asked that the complaint be resolved informally, but the respondent officers, confident of the propriety of their actions, would not agree to any concession and in fact refused even to be interviewed by the Commissioner until after the complaint had been referred to a hearing of the board, thereby effectively forestalling any decision to dismiss the complaint as frivolous.

It should be noted that in the eleven months covered by the report, there has not been any finding of a disciplinary default having been committed. There was however, a total of 26 complaints still awaiting final disposition carried forward to the new year, and two which were referred to the board with hearings also scheduled after Jan. 1, 1986.

The Law Enforcement Review Board

The board consists of 12 members appointed by the Lieutenant Governor-in-Council and includes a presiding officer and deputy presiding officer, both of whom are lawyers. Hearings are held by panels consisting of either the presiding officer or deputy presiding officer, and two or more members of the board, selected in rotation. Hearings are conducted as hearings "de novo"; members of the board are not permitted to receive any information respecting the Commissioner's investigation in advance of the hearing and are not aware of any discussions or findings resulting from the Commissioner's consideration of the matter.

In accordance with current legislation, the complainant may be represented by legal counsel at any stage of proceedings under **The Law Enforcement Review Act**. For board hearings only, a complainant who is financially eligible is entitled to representation by a Legal Aid lawyer. In cases where a complainant's application to Legal Aid is refused because of financial ineligibility but the cost of legal counsel would impose a financial hardship, the Minister, on the recommendation of the Commissioner, may provide legal counsel at public expense. In all other instances, the complainants have to pay for their own legal costs, unless they elect to appear before the board without the assistance of a lawyer.

The presentation of a complaint to a board hearing is the responsibility of the complainant. In this respect, the L.E.R.A. process is quite different from, for example, prosecution of complaints under **The Human Rights Act**. In the latter case, the Human Rights Commission, through the Commission's counsel, not the complainant, has the carriage of the complaint before a tribunal. An argument might be made for a similar process in the case of hearings before the Law Enforcement Review board. The object of a hearing on the merits of a complaint is to determine whether the conduct of a member of a police department warrants the imposition of some disciplinary measure. This may be as little as a reprimand or admonition or perhaps the forfeiture of time off or of a day's pay. There is no compensation provided the complainant, not even for the legal expenses incurred. The ultimate purpose of the L.E.R.A. process, is to maintain a high standard of police performance, in the general public interest. The individual complainant can only hope to receive a measure of moral satisfaction which perhaps does not warrant a considerable expenditure, for legal costs, from private means. On the other hand, police officers are entitled to legal representation at public expense under their terms of employment. These considerations have been brought to the attention of the Minister.

Other Activities

During the year the Commissioner appeared on a radio talk show in Brandon and on a morning and afternoon CBC Radio Program, as well as the C.J.O.B. talk show hosted by Peter Warren. A briefing meeting was held with members of the Brandon Police Department and with City of Winnipeg Park Police. Similar meetings with members of the Winnipeg Police Department, at the various divisional headquarters are planned but have had to be deferred because of a lack of time. A very thorough briefing on the L.E.R.A. process has however been included in the police department's training program and should be instrumental in familiarizing the police with the new provisions for dealing with citizen complaints.

An "International Conference on Civilian Oversight of Law Enforcement" was held in Toronto, October 1 to 4, 1985. The Conference attracted about 170 delegates, the majority from the U.S.A. and Canada, but also including a number of overseas countries. Manitoba delegates included Dr. Reynaldo D. Pagtakhan, of the Winnipeg Police Commission, Mr. Arne Peltz, Vice-Chairman of the Manitoba Police Commission, Mr. Neville D. Shende, Q.C., L.E.R.A. legal counsel and Hans J. Schneider, L.E.R.A. Commissioner. The latter participated as a member of one of the panels discussing various forms of civilian oversight. The conference which is to become an annual event, culminated in the formation of an association of civilian oversight agencies which L.E.R.A. also agreed to join.

Statistical Tables

We have provided some rudimentary statistical data in the following tables:

Table 1: Provides a general overview of the first year's operation. It will be noted in this table complaints processed number 112 whereas the number of allegations is shown as 135. This reflects the fact that some complaints allege more than one disciplinary default.

Table 2: This table simply lists the complaints received during each of the eleven months that L.E.R.A. was in operation. It is not a reliable indication of any pattern in the occurrence of incidents because in many instances there is a considerable delay between the incident complained of and the registering of the complaint. The table does however, permit some conclusions as to long-term trends. The obvious conclusion at this time is that the number of complaints is not increasing and may even be decreasing.

Table 3: This table indicates that 94 complainants were male and only 18 female. The fact that 38 or 33% of complainants were over 30 years of age was a surprise since that age group generally has much less occasion and inclination to get into conflict with the police.

Table 4 — Time of Day of Incident: This table confirms the predictable circumstance that the majority of incidents leading to complaints occur during the night.

Table 5 — Day of the Week of Incident: This table defies interpretation. It would have been logical to expect a high percentage of incidents to occur on Friday and Saturday, which instead turned out to be the low points of the week. It may be an indication that the number of complaints reflects police attitudes and motivation to a larger extent than it does complainant activities.

Table 6 — Location of Incident: The total number of locations listed exceeds the total number of incidents because in some complaints the matters complained of occurred in more than one place.

Table 7 — Legal Involvement of Complainant: Again the total number of infractions is greater than the number of complaints because in some cases more than one charge was laid by the police. In a surprisingly large number of cases the complainant was not charged with anything. For the most part these complaints involve the less serious allegations such as using oppressive and abusive conduct or language or being discourteous or uncivil.

Table 1
Totals for the Year
(Feb. 1 to Dec. 31, 1985)

Number of Citizens' representations received	167
Non-jurisdiction, not within scope of The Act, time-expired	55
Complaints accepted for investigation	112
Origin	
Brandon	6
Winnipeg	105
Other	1
Files Closed — Disposition	
No further action Sec. 13(1)	33
Withdrawn by Complainant	25
Informal Resolution	25
Referred to a L.E.R.A. Board Hearing on the merits	3
Total	86
Files open at December 31, 1985	26
Type of Allegations	
Using unnecessary violence or excessive force	44
Using oppressive or abusive conduct or language	37
Being discourteous or uncivil	31
Discrimination	2
Failing to use restraint in the use of firearms	5
Damaging property or failing to report the damage	3
Making a false statement, or destroying, concealing or altering any official document or record	5
Failing to provide assistance	2
Violation of privacy	1
Arrest without reasonable or probable grounds	5
Total	135

Table 2
Complaints Received by Month

February	10
March	13
April	8
May	12
June	10
July	15
August	9
September	13
October	11
November	6
December	5
Total	112

Table 3
Complaints By Age & Sex of
Complainants or Affected Persons

	Male	Female	Total
Under 18 years	15	—	15
18 - 30 years	37	12	49
Over 30 years	32	6	38
Unknown	10	—	10
Total	94	18	112

Table 4
Time of Day of Incident

8:00 a.m. - 8:00 p.m. (day)	41
8:00 p.m. - 8:00 a.m. (night)	68
Unknown	3
Total	112

Table 5
Day of the Week of Incident

Monday	16
Tuesday	21
Wednesday	18
Thursday	14
Friday	10
Saturday	10
Sunday	23
Total	112

Table 6
Location of Incident

Street	58
Private home	20
Public bldg./place or police station	29
Police vehicle	7
Other (unknown)	4
Total	118

Table 7
Legal Involvement of Complainant

No charges	47
Traffic violation	24
Property offences	11
Intoxicated Persons's Detention Act	8
Causing disturbance	6
Assault peace officer/resist arrest	6
Impaired driving	3
Offences Against Another Person	3
Other*	19
Total	127

*Examples of Other:

- public mischief
- criminal negligence in operating motor vehicle
- wilful damage
- possession of weapon dangerous to public peace
- traffic in a narcotic

Appendices

Appendix I — Complaint Form

Manitoba

The Law Enforcement Review Act Form 1

DATE and TIME REPORTED

Nº 1

COMPLAINT



Complainant Surname		First Name		Day Initial(s)		Month		Year		Time		Sex		Marital Status	
Home Address		Postal Code		Telephone No — Residence		Business Address		Postal Code		Telephone No — Business					
Date of Incident		Time		Location											

DETAILS OF INCIDENT (must be typewritten or printed)

Details of Injuries Sustained										Photographs Taken		NO		YES	
Attending Physician Name		Address		Telephone No		Hospital Attended		Date Attended							
Name		Address		Telephone No		Name		Telephone No							
Name		Address		Telephone No		Name		Telephone No							
Name and Rank		Number		Form 2 given to complainant		If no, state reason									
COMPLAINT RECEIVED BY				Yes		No									
I CERTIFY THAT THE INFORMATION I HAVE GIVEN HEREIN IS TRUE.										Signature of Complainant					

DISTRIBUTION: Quadruplicate
 L.E.R.A. Commissioner (white)
 Complainant (canary)
 Police Chief (pink)
 Respondent Officer (goldened)

MO-1279

OVER



Attorney General

Law Enforcement
Review Agency

12th Floor
Woodsworth Building
405 Broadway
Winnipeg, Manitoba, CANADA
R3C 3L6

Complaint Procedures

TO THE COMPLAINANT:

This statement sets out the procedures that will be followed in dealing with your complaint and your rights under **The Law Enforcement Review Act**.

Who May Make a Complaint:

1. Any person who feels aggrieved by the action or attitude of a police officer may make a complaint.
2. A complaint may also be made by another person on behalf of the person affected by the incident complained about. This would most often be the case if the affected person has died, is a minor or is temporarily or permanently incapacitated from acting on his or her own behalf. Unless the affected person is under 18 years of age or is not competent to give consent, the complaint will only be proceeded with if the affected person consents in writing.

How to Make Your Complaint:

3. Your initial complaint may be made verbally or in writing to any member or the chief of the police department involved or directly to the office of the Law Enforcement Review Agency (L.E.R.A.) Commissioner at the 12th Floor, 405 Broadway Avenue (Woodsworth Building), Winnipeg, Manitoba R3C 3L6, telephone 945-8667.
4. You will be asked to complete a complaint form (Form 1). You may request the assistance of the Commissioner's office or of a member of the police department to assist you in completing this form. Before it can be dealt with by the Commissioner, a complaint must be submitted in writing and signed by the complainant.

Note: If a complaint against an R.C.M.P. officer is made to the Commissioner, it will be forwarded to the Commissioner of the Royal Canadian Mounted Police. Procedures under **The Law Enforcement Review Act** do not apply to such complaints. They are dealt with under **The R.C.M.P. Act**.

Time Limits:

5. Ordinarily complaints must be submitted within 30 days of the incident leading to the complaint. Under special circumstances, where the complainant has no reasonable opportunity to meet this deadline, the Commissioner may extend the time, but to not more than six months from the date of the incident. Such special circumstances might include the complainant's absence in some remote location or out of the province or sickness or injury.
6. Where a complainant faces criminal charges connected with the incident which leads to the complaint, the Commissioner may extend the time limit to not more than 30 days after the final disposition of the charges or one year from the date of the incident, whichever is the sooner.

Who Sees Your Complaint:

7. No matter where your complaint is recorded, a copy will be sent to the L.E.R.A. Commissioner and the chief of police of the police department concerned. The police officer complained against will also receive a copy as soon as is practicable.

Investigation and Reports:

8. An investigator from the Commissioner's office may interview you, the police officer concerned and any other persons who can provide relevant information on your complaint.
9. If you prefer to have your complaint dealt with by an internal investigation by the police force concerned, you may make a written request to this effect to the Commissioner who may then decide to suspend his own investigation. He will however receive a report of the internal investigation.

Appeal to Police Commission:

10. On reviewing the results of the investigations, the Commissioner may decide that the complaint was not justified, or that the matter complained of does not constitute a disciplinary default as defined in the Act. In that case you will be informed that no further action will be taken. If you are not satisfied with the reasons for this decision, you may apply to the Manitoba Police Commission to review the matter.
11. The Commission may sustain the decision of the Commissioner or order that the complaint be proceeded with. The Commission's ruling is final.

Informal Resolution of Complaint:

12. After the Commissioner has reviewed the circumstances of the complaint, he will consult with you to determine whether the complaint can be resolved informally. An important purpose of **The Law Enforcement Review Act** is to maintain harmony and cooperation between police and the community. Very often this purpose is best served by mutual explanations and reconciliations.
13. Both you and the police officer concerned must agree on the way in which the complaint is to be resolved, otherwise an informal resolution cannot take place.
14. As an alternative to informal resolution, the police officer may admit to a disciplinary default and accept a penalty prescribed by the Commissioner.

Law Enforcement Review Board:

15. The Board established under the Act holds a hearing to review the complaint under the following circumstances:
 - (i) Where the Manitoba Police Commission, on application of the complainant, has overruled the decision of the Commissioner not to take further action (see Item 11).
 - (ii) Where the police officer complained against does not admit to being at fault.
16. You will be notified at least 14 days in advance of the date set by the Board for its hearing.
17. You may present your own case before the Board or you may be represented by counsel.
18. Board hearings are public except where the Board decides that they should be held in private in the interests of justice.
19. All testimony at a Board hearing is made under oath.
20. The Board is required to dismiss a complaint that cannot be proven beyond a reasonable doubt. You will be informed of the Board's decision as soon as practicable after the hearing, and if you request it, the reasons for the Board's decision.

Appeal:

21. You may appeal a decision of the Board to the Court of Queen's Bench but only on a question of the Board's jurisdiction or a question of law.

Legal Counsel:

22. You may be represented by counsel at any stage of the proceedings, including hearings by the Commissioner or the Board.
23. A Legal Aid lawyer may be provided to complainants who are financially eligible for Legal Aid. In special cases, the Commissioner may recommend provision of legal counsel at public expense where a complainant is not eligible for Legal Aid but the cost of a lawyer would represent a substantial financial hardship.

Reports:

24. During the course of processing your complaint, you will receive progress reports at least every month if proceedings take longer than 30 days and you will be informed of the final disposition of your complaint.

Further Questions:

25. If you require additional information or explanations, please apply to the Commissioner, Law Enforcement Review Agency (L.E.R.A.), 12th Floor, 405 Broadway Avenue, Winnipeg, Manitoba R3C 3L6, or telephone 945-8667, Toll Free: 1-800-282-8069.

Appendix II

The Law Enforcement Review Act and Regulations

Language Certificate:

I hereby certify that this Bill was printed in the English language only when copies were first distributed to the members of the House.

Dated this 29th day of August, 1983.

W. H. REMNANT, Clerk of the House.

CHAPTER L75

THE LAW ENFORCEMENT REVIEW ACT

(Assented to August 18, 1983)

HER MAJESTY, by and with the advice and consent of the Legislative Assembly of Manitoba, enacts as follows:

Definitions.

1 In this Act

"board" means the Law Enforcement Review Board appointed under this Act;

"Chief of Police" means the executive head of a municipal police department by whatever rank or title he may be designated, and includes any member acting as the executive head of a municipal police department;

"Commissioner" means the Commissioner appointed under this Act;

"complainant" means a person who has filed a complaint under this Act;

"complaint" means a complaint made by a person in respect of a disciplinary default allegedly committed by a member of a police department;

"disciplinary default" means any act or omission referred to in section 29;

"member" or "member of a police department" means any person employed in a municipal police department having the powers of a peace officer or employed as a peace officer in any municipality in the Province of Manitoba;

"minister" means the member of the Executive Council charged by the Lieutenant Governor in Council with the administration of this Act;

"respondent" means a member against whom a complaint has been made under this Act;

"service record" means a service record established under section 32.

S.M. 1982-83-84, c. 21, s. 1.

Appointment of Commissioner.

2(1) The Lieutenant Governor in Council shall appoint a Commissioner.

Powers, duties and functions.

2(2) The Commissioner has such powers and shall carry out such duties and functions as conferred or imposed under this Act or as may be required for purposes of this Act by the Lieutenant Governor in Council.

Full-time appointment.

2(3) The Commissioner shall devote his full time to his responsibilities under this Act, and shall not concurrently hold any full-time or part-time position of any kind.

S.M. 1982-83-84, c. 21, s. 2.

Commissioner is officer of Manitoba Police Commission.

3 The Commissioner is an officer of the Manitoba Police Commission.

S.M. 1982-83-84, c. 21, s. 3.

Law Enforcement Review Board established.

4(1) There is hereby established a board to be known as the "Law Enforcement Review Board" comprised of not less than 7 persons, including a presiding officer and deputy presiding officer, appointed by the Lieutenant Governor in Council for such term as designated by the Lieutenant Governor in Council.

Powers, duties and functions.

4(2) The board has such powers and shall carry out such duties and functions as conferred or imposed under this Act or as may be required for purposes of this Act by the Lieutenant Governor in Council.

Presiding officers to be lawyers.

4(3) No person shall be appointed presiding officer or deputy presiding officer of the board unless he is a member in good standing of the Law Society of Manitoba with at least 5 years' experience at the Bar.

Board to include peace officers.

4(4) The membership of the board shall at all times include at least 2 persons who are or were peace officers.

Quorum.

4(5) Three board members constitute a quorum for purposes of conducting board business.

Panel chosen on sequential basis.

4(6) On or before April 1 of every year, the presiding officer of the board shall prepare a list naming all the members of the board, and for purposes of holding hearings or conducting other board business, the members shall serve in sequence as their names appear on the list; but if by reason of subsection 24(2) a board member is ineligible to sit on a hearing, the next member in sequence shall be selected to sit on the hearing.

S.M. 1982-83-84, c. 21, s. 4.

Assistance of experts.

5 The minister may authorize the Commissioner at the expense of the government to retain the services of counsel and other experts as the Commissioner deems fit.

S.M. 1982-83-84, c. 21, s. 5.

Complaint concerning police conduct.

6(1) Every person who feels aggrieved by a disciplinary default allegedly committed by any member of a police department may file a complaint under this Act.

Third party complaint.

6(2) The complaint may be filed notwithstanding that the alleged disciplinary default has affected some person other than the complainant, but has not affected the complainant.

Procedure for filing complaint.

6(3) Every complaint shall be in writing signed by the complainant setting out the particulars of the complaint, and shall be submitted to

- (a) the Commissioner; or
 - (b) the Chief of Police of the department involved in the complaint; or
 - (c) any member of the department involved in the complaint;
- not later than 30 days after the date of the alleged disciplinary default.

Verbal complaint.

6(4) Every member who receives a verbal complaint concerning conduct which may constitute a disciplinary default shall forthwith inform the person making the verbal complaint that a complaint under this Act must be made in writing and shall forthwith inform the person of the relevant time limits set out in this section.

Where complainant unable to write.

6(5) Where the complainant is unable to reduce the complaint into writing, the person to whom the complaint is made shall

- (a) take down the complaint in writing;
- (b) read the complaint back to the complainant; and
- (c) have the complainant sign the complaint.

Commissioner may extend time.

6(6) Where the complainant has no reasonable opportunity to file a complaint within the time period set out in subsection (3), the Commissioner may extend the time for filing the complaint to a date not later than 6 months after the date of the alleged disciplinary default.

Where complainant faces criminal charges.

6(7) Where an alleged disciplinary default occurs in the course of an investigation, arrest or other action by a member which results in a criminal charge against the complainant, the Commissioner may extend the time for filing the complaint to a date not later than 1 year after the date of the alleged disciplinary default or 30 days after the final disposition of the criminal charge, whichever is the sooner.

S.M. 1982-83-84, c. 21, s. 6.

Notification of complaint.

7(1) Where a complaint is made

- (a) to the Commissioner, the Commissioner shall forthwith forward a copy of the complaint to the Chief of Police of the department involved in the complaint;
- (b) to a member of the department involved in the complaint, the member shall forthwith forward a copy of the complaint to the Chief of Police of that department who shall forward a copy to the Commissioner;
- (c) to the Chief of Police of the department involved in the complaint, the Chief of Police shall forthwith forward a copy of the complaint to the Commissioner;

together with any other statements or documents submitted by the complainant.

Copy of complaint to respondent.

7(2) Upon receiving a complaint, the Commissioner shall, as soon as it is practicable, provide the respondent with a copy of the complaint.

S.M. 1982-83-84, c. 21, s. 7.

No complaint by member.

8 Notwithstanding section 6, no member shall file a complaint under this Act in respect of any act or omission which affects the member while he is executing his duties.

S.M. 1982-83-84, c. 21, s. 8.

Commissioner to notify affected person.

9(1) Where a complaint has been filed in the circumstances referred to in subsection 6(2), the Commissioner, forthwith after receiving the complaint, shall in writing notify the person affected by the alleged disciplinary default that a complaint has been filed under this Act.

Affected person must consent.

9(2) Where the person affected by the alleged disciplinary default does not, within 14 days of receiving the notification referred to in subsection (1) or within such further time as the Commissioner may allow, file with the Commissioner a written consent to the processing of the complaint under this Act, the Commissioner shall take no further action on the complaint.

Where no consent required.

9(3) Subsection (2) does not apply where the person affected by the alleged disciplinary default is an infant or is not competent to give consent.

S.M. 1982-83-84, c. 21, s. 9.

Further particulars.

10 On his own behalf or at the request of the respondent, the Commissioner may require the complainant to provide further particulars of the conduct complained of and the Commissioner shall forward a copy of the further particulars to the respondent and to the respondent's Chief of Police.

S.M. 1982-83-84, c. 21, s. 10.

Complaint against Chief of Police.

11(1) Any person wishing to make a complaint against a Chief of Police shall file the complaint with the Commissioner; and this Act, except subsection 12(8), applies with necessary modifications thereto.

No complaint in disciplinary matter.

11(2) Notwithstanding subsection (1), no member shall file a complaint under this Act in respect of the exercise by the Chief of Police of his power to discipline any member.

S.M. 1982-83-84, c. 21, s. 11.

Investigation by Commissioner.

12(1) Upon receiving a complaint, the Commissioner shall forthwith cause the complaint to be investigated and for this purpose, the Commissioner has all the powers of Commissioners under Part V of The Manitoba Evidence Act.

Relevant materials forwarded to Commissioner.

12(2) At the request of the Commissioner, the Chief of Police of the department involved in the complaint shall forthwith forward to the Commissioner copies of all documents, statements, and other materials relevant to the complaint which are in the possession, or under the control, of the police department involved in the complaint.

Materials required for criminal investigation.

12(3) Where any of the materials referred to in subsection (2) are required for the purpose of a criminal investigation, the Chief of Police may request, and the Commissioner may grant, an extension of time for forwarding copies of such materials.

Questions of privilege.

12(4) Where the Chief of Police declines to forward copies of any of the materials referred to in subsection (2) on the ground that the materials are privileged, the Commissioner may make summary application to a judge of the Court of Queen's Bench for a ruling on the question of privilege.

Order to search and seize.

12(5) Where a justice is satisfied by information upon oath of the Commissioner, or a person employed by the Commissioner, that there is reasonable ground to believe that there is in a building, receptacle or place

- (a) anything upon or in respect of which a disciplinary default under this Act has been or is suspected to have been committed; or
- (b) anything which there is reasonable ground to believe will afford evidence of the commission of a disciplinary default under this Act;

the justice may issue a warrant authorizing a person named therein or the Commissioner to search the building, receptacle or place for any such thing, and to seize the thing and bring it before the Commissioner for use by the Commissioner in investigating a complaint under this Act.

Utilizing necessary resources and persons.

12(6) Subject to subsection (7), the Commissioner may utilize any resources and employ any persons the Commissioner deems necessary for the prompt and thorough investigation of a complaint.

No investigation by department involved in complaint.

12(7) Except as otherwise provided in this section, the Commissioner shall not employ for purposes of investigation any person who is, or at the time of the occurrence complained of was, a member of the police department involved in the complaint.

Internal investigation.

12(8) At the written request of the complainant, the Commissioner may refer the complaint to the respondent's Chief of Police for internal investigation.

Criminal investigation.

12(9) Where the respondent's Chief of Police informs the Commissioner that the respondent's conduct is being or will be investigated by the internal investigation unit of the department for the possible laying of criminal charges against the respondent, the Commissioner may request the Chief of Police to forward the results of the investigation to the Commissioner for purposes of this Act.

Report by Chief of Police.

12(10) When the internal investigation referred to in subsection (8) or (9) has been completed, the Chief of Police shall report the results of the investigation to the Commissioner, and the Commissioner shall thereafter deal with the complaint as provided in this Act.

S.M. 1982-83-84, c. 21, s. 12.

Commissioner not to act on certain complaints.

13(1) Where the Commissioner is satisfied that the subject matter of the complaint

- (a) is frivolous or vexatious; or
- (b) does not fall within the scope of section 29;

the Commissioner shall decline to take further action on the complaint and shall in writing inform the complainant, the respondent, and the respondent's Chief of Police of his reasons for declining to take further action.

Application to Manitoba Police Commission.

13(2) Where under subsection (1) the Commissioner has declined to take further action on the complaint, the complainant may apply to the Manitoba Police Commission for an order requiring the Commissioner to refer the complaint to the board for a hearing.

Police commission to hear parties.

13(3) At the request of either party, the Manitoba Police Commission shall hear submissions from the parties in support of or in opposition to an application brought under subsection (2).

Burden of proof on complainant.

13(4) Where an application is brought under subsection (2), the burden of proof is on the complainant to show that the Commissioner erred in declining to take further action on the complaint.

Decision of Manitoba Police Commission final.

13(5) The decision of the Manitoba Police Commission on an application under subsection (2) is final and shall not be subject to appeal or review of any kind.

S.M. 1982-83-84, c. 21, s. 13.

Evidence of internal disciplinary matter.

14 Where under subsection 9(2) or section 13 the Commissioner takes no further action on a complaint, but the investigation has revealed evidence of matters which may be subject to internal police discipline, the Commissioner may forward all relevant material to the appropriate disciplinary authority in the police department for the possible commencement of internal disciplinary procedures.

S.M. 1982-83-84, c. 21, s. 14.

Informal resolution of complaint.

15(1) Where the investigation has been completed, the Commissioner shall consult with the complainant, the respondent and the respondent's Chief of Police for the purpose of resolving the complaint informally.

Agreement between complainant and respondent.

15(2) Where the complainant and the respondent concur, but the respondent's Chief of Police does not concur, with a proposal to resolve the complaint informally, the Commissioner may nevertheless resolve the complaint informally in accordance with the proposal.

No record of informal resolution.

15(3) Where the complaint is resolved informally, no penalty shall be imposed against the respondent and no record of either the complaint or the informal resolution thereof shall be entered on the service record of the respondent.

S.M. 1982-83-84, c. 21, s. 15.

Admission of disciplinary default.

16(1) Where the respondent admits having committed a disciplinary default, the Commissioner shall recommend one or more of the penalties set out in section 30.

Appropriate penalty determined.

16(2) Before recommending one or more of the penalties set out in section 30, the Commissioner shall consult with the respondent's Chief of Police and shall examine the service record of the respondent.

Matters relevant to appropriate penalty.

16(3) The purpose of the Commissioner's consultation with the respondent's Chief of Police shall be to determine the opinion of the Chief of Police with respect to

(a) the severity of the alleged disciplinary default; and

(b) the contents of the respondent's service record;

and the Commissioner's recommendation concerning an appropriate penalty shall be based solely upon these two factors.

Imposition of penalty.

16(4) If the respondent concurs with the recommendation of the Commissioner, the respondent's Chief of Police shall impose the penalty; but where the respondent is a Chief of Police, the employer of the Chief of Police shall impose the penalty.

Referral to board.

16(5) If the respondent does not concur with the recommendation of the Commissioner, the Commissioner shall refer the complaint to the board for a hearing on the question of the penalty to be imposed against the respondent.

Statement of facts and recommended penalty.

16(6) Where the Commissioner refers a complaint to the board under subsection (5), the Commissioner shall prepare and forward to the board a written statement of

(a) the facts which constitute the subject matter of the complaint; and

(b) the penalty or penalties recommended by the Commissioner under subsection (1);

and the Commissioner shall provide the respondent with a copy of the statement.

S.M. 1982-83-84, c. 21, s. 16.

Referral to board on merits.

17(1) Where

- (a) the Manitoba Police Commission has ordered the Commissioner to refer a complaint to the board for a hearing; or
- (b) disposition of a complaint within the terms of section 15 or section 16 is not possible;

the Commissioner shall refer the complaint to the board for a hearing on the merits of the complaint.

Notice of alleged disciplinary default.

17(2) Where the Commissioner refers a complaint to the board under subsection (1), the Commissioner shall serve the respondent with notice of each alleged disciplinary default in the form prescribed by the regulations, and the Commissioner shall forward a copy of the notice of each alleged disciplinary default to the board.

Statement recommending appropriate penalty.

17(3) Upon referring a complaint to the board under subsection (1), the Commissioner shall prepare a written statement recommending one or more of the penalties set out in section 30 to be the penalty which in the Commissioner's opinion the board should impose for each alleged disciplinary default, and the Commissioner shall provide the respondent with a copy of the statement.

Forwarding of statement to board.

17(4) The Commissioner shall not forward the statement referred to in subsection (3) to the board unless, subsequent to determining the merits of the complaint, the board requests the statement for the purposes of clause 28(2)(b).

Appropriate penalty determined.

17(5) Before preparing the statement referred to in subsection (3), the Commissioner shall consult with the respondent's Chief of Police and shall examine the service record of the respondent; and subsection 16(3) applies to the consultation and to the Commissioner's recommendation.

Recommendation by Manitoba Police Commission.

17(6) Where the Manitoba Police Commission has ordered the Commissioner to refer a complaint to the board for a hearing, the Manitoba Police Commission shall determine an appropriate penalty for each alleged disciplinary default in accordance with the procedures set out in this section, and the Commissioner shall observe the requirements of subsection (3) as if the Commissioner had determined the appropriate penalty.

S.M. 1982-83-84, c. 21, s. 17.

Access to documents and statements.

18(1) Subject to subsection (2), all parties to a board hearing and their counsel, but no other persons, are entitled to examine any relevant documents or statements in the possession, or under the control, of the Commissioner.

Questions of privilege.

18(2) Where the Commissioner believes that a question of privilege arises in respect of any documents or statements in his possession or under his control, he may make summary application to a judge of the Court of Queen's Bench for a ruling on the question of privilege.

S.M. 1982-83-84, c. 21, s. 18.

Respondent entitled to remain silent.

19 The respondent is not bound to make any statement to the Commissioner, or to answer any question asked by the Commissioner or anyone employed by the Commissioner.

S.M. 1982-83-84, c. 21, s. 19.

Respondent's statements inadmissible.

20(1) No statement made by the respondent to the Commissioner or to anyone employed by the Commissioner, except a statement made for purposes of section 16, is admissible at any hearing of the board without the consent of the respondent.

Statement for purposes of resolution privileged.

20(2) Any statement made by either the complainant or the respondent for purposes of resolving the complaint under section 15 is privileged for all purposes, including an action arising out of the same facts as the complaint.

S.M. 1982-83-84, c. 21, s. 20.

Right to counsel.

21 Both the complainant and the respondent have a right to counsel at any stage of any proceedings under this Act, including review by the Commissioner.

S.M. 1982-83-84, c. 21, s. 21.

Contributing causes.

22 Where the Commissioner identifies any organizational or administrative practices of a police department which may have caused or contributed to an alleged disciplinary default, the Commissioner may recommend appropriate changes to the Chief of Police and to the municipal authority which governs the department.

S.M. 1982-83-84, c. 21, s. 22.

Fixing and notification of date of hearing.

23(1) Where the Commissioner has referred a complaint to the board under this Act, the board shall fix a date, time, and place for a hearing and shall notify

- (a) the complainant;
- (b) the respondent;
- (c) the respondent's Chief of Police; and
- (d) the Commissioner;

of the date, time, and place at least 14 days prior to the hearing.

Parties to hearing.

23(2) The complainant and the respondent are parties to any board hearing, but the board may add such other parties, and may receive submissions from such other persons, as it sees fit.

S.M. 1982-83-84, c. 21, s. 23.

Who presides at hearing.

24(1) The presiding officer or deputy presiding officer shall preside at every board hearing.

Member of same department not to sit on hearing.

24(2) No board member who is or has been a member of a police department shall sit on any hearing involving a complaint against a member of that police department.

Powers of board under Evidence Act.

24(3) For the purpose of holding a hearing under this Act, the board has all the powers of Commissioners under Part V of The Manitoba Evidence Act.

Summary conviction procedures to apply.

24(4) Except as otherwise provided in this Act or by regulation, the rules of procedure in summary conviction proceedings apply to all board hearings.

Evidence.

24(5) The board may receive and accept such evidence and information on oath, affirmation, affidavit, or otherwise as in its discretion it may deem fit and proper, whether admissible in evidence in a court of law or not; and the evidence and information shall be recorded.

Right to participate.

24(6) At every board hearing, the parties may be present, may call witnesses, may cross-examine witnesses in respect of viva voce or affidavit evidence, and may be represented by counsel.

Presentation of case in support of complaint.

24(7) The case in support of the complaint may be presented by

- (a) the complainant; or
- (b) counsel retained by the complainant; or
- (c) where the complainant applies and is financially eligible for legal aid, counsel appointed by The Legal Aid Services Society of Manitoba.

Where complainant ineligible for legal aid.

24(8) Where the complainant applies but is financially ineligible for legal aid, the Commissioner shall review the complainant's finances, and where the Commissioner believes that the complainant cannot afford to retain counsel, the Commissioner may recommend that the minister appoint counsel to present the case in support of the complaint; and the minister may appoint counsel for that purpose.

Hearing in absence of respondent.

24(9) Where the respondent absconds or refuses or neglects without good and sufficient cause to attend the hearing, the board may hold the hearing in the respondent's absence.

Respondent not compellable.

24(10) The respondent is not compellable as a witness at any board hearing.

Public hearing.

24(11) Every board hearing shall be public, unless the maintenance of order or the proper administration of justice requires that all or part of a hearing be held in-camera; and the board may order that all or part of a hearing be held in-camera.

Justifying in-camera hearing.

24(12) Where any party applies to have all or part of a hearing held in-camera, the onus shall be on that party to satisfy the board that the maintenance of order or the proper administration of justice requires an in-camera hearing.

S.M. 1982-83-84, c. 21, s. 24.

Ban on publication.

25 Notwithstanding that all or part of a board hearing is public, no person shall cause to be published in any newspaper or other periodical publication, or broadcast on radio or television, the name of the respondent until the board has determined the merits of the complaint or the respondent admits having committed a disciplinary default.

S.M. 1982-83-84, c. 21, s. 25.

Admission of disciplinary default.

26 At the commencement or during the course of a board hearing, the respondent may admit having committed a disciplinary default; and if the respondent admits the default, the provisions of section 28 apply.

S.M. 1982-83-84, c. 21, s. 26.

Decision by board.

27(1) As soon as practicable after the conclusion of the hearing, the board shall decide whether the respondent has committed a disciplinary default and the board shall deliver its decision in writing

- (a) to the parties; and
- (b) where the respondent's Chief of Police and the Commissioner are not parties, to the respondent's Chief of Police and the Commissioner.

Standard of proof.

27(2) The board shall dismiss a complaint in respect of an alleged disciplinary default unless the board is satisfied beyond a reasonable doubt that the respondent has committed the disciplinary default.

Reasons for decision.

27(3) At the request of any party or the minister, the board shall provide to the parties and, where requested, to the minister, written reasons for

- (a) the board's decision on the merits of a complaint; or
- (b) a penalty ordered by the board under section 28.

S.M. 1982-83-84, c. 21, s. 27.

Ordering of penalty.

28(1) Where the respondent admits having committed or is found to have committed a disciplinary default, the board shall hear the submissions of the parties and details of the service record of the respondent; and the board shall order one or more of the penalties set out in section 30 for each disciplinary default which the respondent has committed.

Review of Commissioner's recommendation.

28(2) Prior to ordering a penalty against the respondent, the board shall

- (a) in the case of a complaint referred to the board under subsection 16(5), examine the written statement forwarded by the Commissioner under subsection 16(6); and
- (b) in the case of a complaint referred to the board under subsection 17(1), receive from the Commissioner and examine the written statement prepared by the Commissioner under subsection 17(3).

Maximum penalty.

28(3) For each disciplinary default which the respondent has committed, the board may order the penalty recommended by the Commissioner, or, in its discretion, a lesser penalty.

Compliance with order of board.

28(4) Where the board has ordered a penalty against the respondent, the respondent's Chief of Police shall impose the penalty; but where the respondent is a Chief of Police, the employer of the Chief of Police shall impose the penalty.

S.M. 1982-83-84, c. 21, s. 28.

Discipline Code.

29 A member commits a disciplinary default where he affects the complainant or any other person by means of any of the following acts or omissions arising out of or in the execution of his duties:

- (a) Abuse of authority, including
 - (i) making an arrest without reasonable or probable grounds,
 - (ii) using unnecessary violence or excessive force,
 - (iii) using oppressive or abusive conduct or language,
 - (iv) being discourteous or uncivil,
 - (v) seeking improper pecuniary or personal advantage,
 - (vi) without authorization, serving or executing documents in a civil process, and
 - (vii) discriminating on the basis of race, nationality, religion, colour, sex, marital status, physical or mental handicap, age, source of income, family status, political belief, or ethnic or national origin.
- (b) Making a false statement, or destroying, concealing, or altering any official document or record.

- (c) Improperly disclosing any information acquired as a member of the police department.
- (d) Failing to exercise discretion or restraint in the use and care of firearms.
- (e) Damaging property or failing to report the damage.
- (f) Being present and failing to assist any person in circumstances where there is a clear danger to the safety of that person or the security of that person's property.
- (g) Violating the privacy of any person within the meaning of The Privacy Act.
- (h) Contravening this Act or any regulation under this Act, except where the Act or regulation provides a separate penalty for the contravention.
- (i) Assisting any person in committing a disciplinary default, or counselling or procuring another person to commit a disciplinary default.

S.M. 1982-83-84, c. 21, s. 29.

Penalties.

30 A member who admits having committed or is found to have committed a disciplinary default is liable to one or more of the following penalties set out in diminishing order of seriousness:

- (a) Dismissal.
- (b) Permission to resign, and in default of resignation within 7 days, summary dismissal.
- (c) Reduction in rank.
- (d) Suspension without pay up to a maximum of 30 days.
- (e) Forfeiture of pay up to a maximum of 10 days' pay.
- (f) Forfeiture of leave or days off not to exceed 10 days.
- (g) A written reprimand.
- (h) A verbal reprimand.
- (i) An admonition.

S.M. 1982-83-84, c. 21, s. 30.

Appeal.

31(1) An appeal from a decision of the board lies to the Court of Queen's Bench upon any question involving the jurisdiction of the board or upon any question of law alone.

Time for filing.

31(2) The appellant shall file a notice of appeal in writing within 30 days after the decision of the board, unless the court in the exercise of its discretion grants an extension of time for the appeal.

Parties to appeal.

31(3) An appeal may be launched by the complainant or the respondent; and the complainant and the respondent are parties to the appeal.

Other parties.

31(4) Upon application, the Commissioner or the board, or both, may be joined as parties to the appeal.

Counsel for appeal.

31(5) At the written request of the Commissioner, the minister may appoint counsel to represent the complainant on the appeal.

S.M. 1982-83-84, c. 21, s. 31.

Service record.

32(1) The Chief of Police of every police department in Manitoba shall keep a service record in respect of each member of the police department.

Contents of service record.

32(2) The Chief of Police shall record on the service record all matters relevant to the professional conduct of the member, including

- (a) all disciplinary defaults under this Act and the penalties imposed therefor;
- (b) all internal disciplinary offences and the penalties imposed therefor; and
- (c) all official commendations given to the member;

but not including any personal matters which are not relevant to the professional conduct of the member.

Commencement of service record.

32(3) For purposes of this Act, each member shall be deemed to have a blank service record as of the coming into force of this Act; and each member's service record shall relate only to the professional conduct of the member subsequent to the coming into force of this Act.

No record of admonition.

32(4) Notwithstanding anything in this Act, where no penalty other than an admonition is imposed against a member for a disciplinary default under this Act, the member's Chief of Police shall not record the disciplinary default or the admonition on the member's service record.

Expunging service record.

32(5) Upon application by a member whose service record contains an entry for a disciplinary default under this Act, the member's Chief of Police shall expunge the entry

- (a) where a reprimand was imposed, after 2 years have expired from the date of disciplining;
- (b) where a forfeiture of pay, leave, or days off was imposed, after 3 years have expired from the date of disciplining; or

(c) where reduction in rank or suspension without pay was imposed, after 5 years have expired from the date of disciplining;
but only if in each case the member has committed no further disciplinary defaults under this Act since the date of disciplining.

Right to inspect service record.

32(6) Every member has the right to inspect his service record.
S.M. 1982-83-84, c. 21, s. 32.

Organizational and administrative practices.

33 Where the board identifies any organizational or administrative practices of a police department which may have caused or contributed to an alleged disciplinary default, the board may recommend appropriate changes to the Chief of Police and to the municipal authority which governs the department.
S.M. 1982-83-84, c. 21, s. 33.

Effect of criminal charge.

34 Where a member has been charged with a criminal offence, there shall be no investigation, hearing or disciplinary action under this Act in respect of the conduct which constitutes the alleged criminal offence unless a stay of proceedings is entered on the charge or the charge is otherwise not disposed of on its merits.

S.M. 1982-83-84, c. 21, s. 34.

Disclosure of possible criminal offence.

35(1) Where a matter before the Commissioner or the board discloses evidence that a member may have committed a criminal offence, the Commissioner or board shall report the possible criminal offence to the Attorney-General and shall forward all relevant material, except privileged material, to the Attorney-General for the possible laying of charges.

Effect of decision to lay charges.

35(2) If the Attorney-General charges the member with a criminal offence, there shall be no further investigation, hearing or disciplinary action under this Act in respect of the conduct which constitutes the alleged criminal offence unless a stay of proceedings is entered on the charge or the charge is otherwise not disposed of on its merits.

Objection conclusively deemed.

35(3) Where a member who testifies before the board is subsequently charged with a criminal offence, the member shall be conclusively deemed to have objected to answering every question put to him before the board on the ground that his statement or his answer may tend to criminate him or to establish his liability to a legal proceeding at the instance of the Crown or of any person.

S.M. 1982-83-84, c. 21, s. 35.

Prosecution for offences.

36 No investigation, hearing, or disciplinary action under this Act precludes the subsequent prosecution of any member for an offence.

S.M. 1982-83-84, c. 21, s. 36.

Effect of complaint on internal discipline.

37(1) Where a complaint has been filed under this Act, the respondent is not subject to any internal police discipline in respect of the conduct which constitutes the subject matter of the complaint.

Suspension of internal disciplinary proceedings.

37(2) Where internal police disciplinary proceedings have been commenced against a member in respect of conduct which constitutes the subject matter of a complaint under this Act, the internal disciplinary proceedings shall terminate upon the filing of the complaint and the matter shall be resolved solely in accordance with this Act.

Effect of completion of internal proceedings.

37(3) No resolution or termination of internal police disciplinary proceedings against a member precludes the subsequent filing of a complaint under this Act in respect of the conduct which constitutes the subject matter of the internal disciplinary proceedings.

Internal disciplinary proceedings unaffected.

37(4) Notwithstanding anything in this section

- (a) where no complaint under this Act has been filed within the time period set out in subsection 6(3); or
- (b) where the Commissioner takes no further action on a complaint in accordance with subsection 9(2) or clause 13(1)(b);

this Act does not affect any internal police disciplinary proceedings, including appeals therefrom, brought against a member in respect of the member's conduct toward any person.

S.M. 1982-83-84, c. 21, s. 37.

Where members of public not involved.

38 This Act does not apply to matters of internal police discipline which do not involve members of the public.

S.M. 1982-83-84, c. 21, s. 38.

Civil remedies.

39 This Act does not affect any civil remedies available to any person.

S.M. 1982-83-84, c. 21, s. 39.

Act to prevail over collective agreement.

40 Where there is conflict between this Act or the regulations hereunder and any collective agreement in force in the province, this Act prevails.

S.M. 1982-83-84, c. 21, s. 40.

Act to prevail over other Acts.

41(1) Where there is conflict between this Act and any other Act of the Legislature, this Act prevails.

Jurisdiction of police commissions.

41(2) Without restricting the generality of subsection (1), where the conduct of a member of a municipal police department is the subject matter of a complaint under this Act, there shall be no inquiry, investigation or hearing by any local police commission or the Manitoba Police Commission in respect of the same conduct except as provided or authorized by this Act.

Meaning of "local police commission".

41(3) For the purposes of this section, "local police commission" means

- (a) any police commission established pursuant to the provisions of the charter of any city; or
- (b) any police commission established under any other Act of the Legislature; or
- (c) any municipal council or any municipal committee, however composed, which is charged with or responsible for the maintenance of a municipal police department.

S.M. 1982-83-84, c. 21, s. 41.

Failure to comply.

42 Every person who, without lawful excuse,

- (a) fails to comply with an order or decision of the Commissioner or the board; or

- (b) contravenes section 25;

is guilty of an offence and is liable on summary conviction to a fine of not more than \$2,000.00 and in default thereof to imprisonment for a term not exceeding 3 months or to both such fine and such imprisonment.

S.M. 1982-83-84, c. 21, s. 42.

Witness fees.

43 The fees payable to witnesses at board hearings are the same as the fees payable to witnesses in the Court of Queen's Bench.

S.M. 1982-83-84, c. 21, s. 43.

Regulations.

44 For the purpose of carrying out the provisions of this Act according to their intent, the Lieutenant Governor in Council may make such regulations and orders as are ancillary thereto and are not inconsistent therewith; and every regulation or order made under, and in accordance with the authority granted by, this section has the force of law; and, without restricting the generality of the foregoing, the Lieutenant Governor in Council may make such regulations and orders, not inconsistent with any other provision of this Act

- (a) prescribing the forms in which complaints, notices of alleged disciplinary defaults, and appeals may be made;
- (b) prescribing rules of procedure to be followed by the board in conducting any hearing held before it;
- (c) respecting such other matters as may be necessary to enable the Commissioner and board to carry out their powers and duties under this Act.

S.M. 1982-83-84, c. 21, s. 44.

Annual report.

45 The Commissioner shall submit an annual report concerning the performance of his duties and functions to the minister and to each municipality in the province which has established a police department; and the minister shall table the report in the Legislature.

S.M. 1982-83-84, c. 21, s. 45.

Transitional provision.

46 Where, before the coming into force of this Act, any complaint was made against a member, that complaint may be disposed of in accordance with the law in force at the time the complaint was made.

S.M. 1982-83-84, c. 21, s. 46.

Reference in Continuing Consolidation.

47 This Act may be referred to as chapter L75 in the Continuing Consolidation of the Statutes of Manitoba.

S.M. 1982-83-84, c. 21, s. 47.

Commencement of Act.

48 This Act comes into force on a day fixed by proclamation.

S.M. 1982-83-84, c. 21, s. 48.

NOTE: This Act was proclaimed in force as of the 1st day of February, 1985; Manitoba Gazette No. 4, page 120, dated January 26, 1985.

MANITOBA REGULATION 8/85

**BEING A REGULATION UNDER THE LAW
ENFORCEMENT REVIEW ACT**

(Filed January 14, 1985)

1 In this regulation, "Act" means The Law Enforcement Review Act.

2(1) In processing two or more complaints respecting the same incident as it affects the same person, the Commissioner shall deem one person to be the complainant.

2(2) Where an affected person and a third person each submit a complaint respecting the same incident in respect of the affected person, the Commissioner shall deem the affected person to be the complainant irrespective of the sequence in time in which the complaints are received.

3 The complainant and the respondent may, at any stage of the proceedings under the Act, agree to resolve the complaint informally and the Commissioner may thereafter suspend any further action and resolve the complaint in accordance with the agreement.

4 Where conduct leading to a complaint is to be investigated by the internal investigation unit of the respondent's department for the possible laying of criminal charges against the respondent, the Chief of Police of the department shall inform the Commissioner of this intention.

5 Witnesses attending at formal hearings of the Commissioner to give testimony under oath are entitled to receive the same fees as are payable to witnesses in the Court of Queen's Bench.

6 The notice of an alleged disciplinary default required to be served on the respondent under subsection 17(2) of the Act shall be in the form set out in Appendix 1 to this regulation.

Printed by the Queen's Printer for the Province of Manitoba

MARCH, 1985

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APPENDIX 1

THE LAW ENFORCEMENT REVIEW ACT

NOTICE OF ALLEGED DISCIPLINARY DEFAULT AND
REFERRAL TO THE LAW ENFORCEMENT REVIEW BOARD

Date of Complaint:

File No.:

Complainant:

Respondent Officer:

(Include Rank, No. and Police Department)

TAKE NOTICE that the Law Enforcement Review Commissioner hereby refers the above matter to the Law Enforcement Review Board for a hearing to determine the merits of the complaint which alleges the commission of certain disciplinary defaults, as defined under Section 29 of The Law Enforcement Review Act, by the above named respondent officer, namely that he/she did:

- 1.
- 2.
- 3.

DATED at this day of , 19

L.E.R.A. Commissioner